

## **PART 1 GENERAL INFORMATION**

### **SECTION 1 INTRODUCTION**

The Maine Department of Health and Human Services is responsible for administering the MaineCare Program in compliance with Federal and State statutes and administrative policies. It is also responsible for state funded assistance programs found within this manual. Within the Department, the Office of Integrated Access and Support (OIAS) establishes and applies written policies and procedures for taking applications and determining eligibility for assistance, consistent with the objectives of the Program. It also respects the rights of individuals under the United States Constitution, the Social Security Act, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and all other relevant provisions of Federal and State laws which do not result in practices that violate the individual's privacy or personal dignity. The Department further holds any policies or procedures developed at the regional level to be consistent.

Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act states that no person shall be excluded from participation, be denied benefits, or be subjected to discrimination on the grounds of race, color, national origin, sex, gender orientation, religion or handicap under any program or activity receiving federal financial assistance. Therefore, the programs of the Department, like every program or activity receiving financial assistance from the Federal Department of Health and Human Services, must be operated in compliance with the law.

In accordance with the Americans with Disabilities Act, no qualified individual with a disability will, by reason of such disability, be subjected to discrimination; or be excluded from participation or be denied the benefits of the services, programs or activities of the Maine Department of Health and Human Services.

### **SECTION 2 CONFIDENTIALITY**

The Department of Health and Human Services, in accordance with Federal Regulation (42 CFR 431.306) and State statutes, must maintain the individual's information in a manner which will ensure that this information is restricted to persons or agency representatives who are subject to standards of confidentiality comparable to those of the Department.

#### **Section 2.1 Release of Information**

Information from the case record will be released under the following circumstances:

- I. The individual has the right to review information in their case record at any time. When the medical source requests that the medical information be kept confidential, that information may not be reviewed by the individual.
- II. All information pertaining to a decision of eligibility for assistance, including medical and social data for preparation of an Administrative Hearing will be made available to the individual or the individual's representative. If the individual is being represented by an attorney, permission to release information to the attorney must be obtained in writing from the individual.

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- III. Financial information relating to eligibility will be given to general assistance administrators if necessary for making a determination of granting general assistance.
- IV. Information relating to whether an individual is a recipient in a particular month will be given to hospitals, physicians, pharmacists, and other medical providers inquiring in order to determine whether to provide their service under MaineCare. The address of the individual is not to be released.
- V. Information necessary for other Offices within the Department to administer their programs may be given. These Offices include Office of Child and Family Services (OCFS) – Child Protective Services, Office of Elder Services (OES) – Adult Protective Services, Division of Support Enforcement and Recovery (DSER), Fraud Investigation and Recovery (FIR), the Preventive Health Program (PHP), and the Division of Administrative Hearings. Information may also be provided to other Offices within DHHS if there is a written Memorandum of Understanding between OIAS and that Office.
- VI. For those agencies having a contract with the Department information may be released that is needed for the agency to fulfill the terms of the contract. Agencies include Home and Community Based Waiver agencies and Community Action Programs.
- VII. In the event of the issuance of a subpoena or order from the court for the case record or for any agency representative to testify concerning an applicant or recipient, the Department's attorneys will call the Court's attention to the statutory provisions and the regulations against disclosure of information. The decision in regard to release of information will be with the presiding judge.

### **Section 2.2 Written Release of Information**

With all other requests, a written release from the individual is required prior to sharing the information. Unless otherwise specified any written release of information is valid for one year from the date of signature by the individual. The release of information must specify the information to be released and to whom.

- I. Release of medical reports to general assistance administrators will be made only if the individual has signed a written release.
- II. Information will be made available upon receipt of written authorization from the individual (or adult family head in the case of children) giving the Department authorization to release information to the following:
  - A. Federal and State legislators;
  - B. attorneys;
  - C. social or financial service agencies requesting information beyond eligibility dates, or, if under contract with the Department, information beyond that necessary to administer their program.
- III. Information about whether the individual is receiving MaineCare, the number of children in the assistance unit and the address of the children will be made available to absent parents inquiring about the status of the family only with written permission of the caretaker relative.

### **Section 2.3 Information from an external source**

For DHHS to obtain information:

- I. the Eligibility Specialists must inform the individual of the Department's need for collateral information; and
- II. receive a signed release form from the individual identifying the information being requested and from whom.

Information in case records and computer files will be used only for Department business, never for obtaining information about friends, relatives or neighbors. Employees of the Department are not permitted to determine their own eligibility or that of their immediate family.

The names of individuals supplying information who wish to remain anonymous will not be kept in the case record.

## **SECTION 3 REFERRALS**

Under certain circumstances referral to other Offices and Divisions within the Department of Health and Human Services are to be made. These include the Office of Child and Family Services (OCFS), the Office of Elder Services (OES) and the Division of Fraud Investigation and Recovery (FIR) within OIAS.

### **Section 3.1 Referrals to Child and Adult Protective Services**

In compliance with Federal and State statutes, when information is brought to the attention of a staff member or there is reasonable cause to suspect abuse, neglect or exploitation, an immediate referral will be made to the Child or Adult Protective Unit which will investigate the suspected abuse.

### **Section 3.2 Referral to the Fraud Investigation and Recovery Unit (FIR) from the Eligibility Unit**

If it appears that a recipient has purposely misrepresented actual circumstances (such as living arrangement, income, or assets) in order to receive MaineCare, and the individual would not have been eligible had the proper information been available at the time of application, re-determination of eligibility, or within ten days of the change in circumstances, a referral to the Fraud Investigation Unit will be made.

The report will include:

- I. a detailed explanation of the misrepresentation and the effect it had on eligibility.
- II. a claims history indicating the services that should not have been paid.

### **Section 3.3 Referrals to the Fraud Investigation and Recovery Unit (FIR) from an outside source**

Complaints received directly by the Fraud Investigation and Recovery Unit may be referred to the Attorney General's Office if it is determined that:

- I. the individual was enrolled in MaineCare at the time alleged fraud occurred;

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- II. it appears that the individual has purposely misrepresented actual circumstances to receive MaineCare;
- III. the individual would not have remained eligible if the complaint is valid; and
- IV. MaineCare paid for services during the time period in question.

The name of individuals supplying information who wish to remain anonymous will not be kept in the case record.

### **SECTION 4 REPLACEMENT OF MEDICAL IDENTIFICATION CARDS**

In those instances when an individual reports the loss or non-receipt of a medical identification card, the Department will issue a replacement card.

Requests may be made by telephone, in writing, or in person.

OIAS will issue replacement cards for those individuals for whom they maintain case records or for SSI recipients. Child welfare recipients will be referred to Office of Child and Family Services (OCFS).

### **SECTION 5 OUT OF STATE COVERAGE**

Medical Services provided outside of the State of Maine are coverable under the following circumstances:

- I. Individuals are eligible for payment of services to qualified providers as long as the provider is located within fifteen miles of the Maine-New Hampshire border or within five miles of the Maine-Canada border.
- II. Individuals absent from the State are eligible for coverage of emergency services. Routine medical services usually require prior authorization from the Office of MaineCare Services (OMS). In both circumstances the provider will need to enroll as a MaineCare provider.

### **SECTION 6 OUTREACH**

State law (22 MRSA §3173) requires the Department of Health and Human Services to inform low-income households of the availability and benefits of MaineCare and provide reasonable and convenient access to the program. The Department publishes information explaining covered services and eligibility.

### **SECTION 7 ADMINISTRATIVE HEARINGS**

An Administrative Hearing (Hearing) is an informal conference held by the Commissioner of the Department, or a Hearing Officer, to review the action taken by the Department in order to ensure that Federal and State policy have been applied correctly. This right is basic throughout all of the public assistance programs. (Administrative Hearings regulations for all of DHHS is found at 10-144 in the Code of Maine Regulations Chapter 1). If the Commissioner authorizes another agent to handle the hearing, the Hearing Officer must be:

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- I. impartial and not have participated in the action causing dissatisfaction;
- II. sufficiently skilled in interviewing to obtain evidence and the facts necessary for a fair determination; and
- III. qualified to evaluate all evidence fairly and realistically, to explain to the individual the policies under which the Department operated and to interpret and inform the Department of any evidence of unsound, unclear or inequitable policies or practices.

Written notification of the right to a hearing is given to all interested parties through the use of pamphlets and informational materials.

Every written notification of Department action on eligibility will include:

- I. the right to a hearing;
- II. the method by which a hearing can be obtained; and
- III. the right to be represented by legal counsel, relative, friends, or other persons. The Department cannot pay for legal services.

### **Section 7.1 Requesting an Administrative Hearing**

Federal and State laws assure that any individual or the individual's representative who believes that proper consideration has not been given to circumstances surrounding a request for assistance may request a hearing. Any oral or written request made by the individual or their representative to the Department that they want an opportunity to present the case to a higher authority is a request for a hearing.

All complaints which are not clear requests for a hearing will be answered by a personal contact or in writing by the Eligibility Specialist, Supervisor, or member of Central Office staff and will explain the individual's right to a hearing. If the individual is satisfied with the adjustment or explanation, activity on the complaint will end. If not, the individual will be offered the opportunity for a hearing.

The Department must assure that the individual understands the process. When a request is made, the Department will not limit or interfere with the individual's rights in any way. In fact, the emphasis of the Department will be on helping the individual submit the request and prepare the case. The Department's regional office will provide information regarding legal services available in the community to assist the individual in representation at hearings.

The Department may request that the Division of Administrative Hearings deny or dismiss a request for a hearing when:

- I. the request is withdrawn in writing by the individual or individual's representative;
- II. the sole issue is one of State or Federal law requiring automatic adjustment for groups of individuals unless the reason for an individual's appeal is disagreement of facts affecting eligibility (such as incorrect computation); or

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- III. the hearing is abandoned. Abandonment occurs when the individual or the individual's representative fails to appear at the hearing without a reason acceptable to the Hearing Officer.

The Department may respond to a series of individual requests for hearings by requesting the Division of Administrative Hearings conduct a single group hearing. The Department will consolidate only cases in which the sole issue involved is one of a single policy issue. If individuals request a group hearing on such an issue, the Department will grant it. In all group hearings, the policies governing hearings will be followed. Thus, individuals will be permitted to present their own cases and to be represented. If, at any time, an individual scheduled for a group hearing wants to withdraw and have an individual hearing, the request must be made to the Division of Administrative Hearings.

Any request for a hearing must be received by the local office or the Division of Administrative Hearings within thirty days (plus two days for mail) starting with the date on the written notice of eligibility unless the Department decides to grant an extension of time.

The hearing process will take no longer than sixty days from the date of the initial request for the hearing except when the individual requests a delay. If the request for a delay is granted, additional time may be added to the sixty days.

A request for a hearing will be acknowledged in writing within five days of its receipt by the local office or the Division of Administrative Hearings. If the Eligibility Specialist has not prepared a hearing report, a request for a hearing will be forwarded to the Division of Administrative Hearings with a note that a report will follow. On receipt of the request, the Division of Administrative Hearings will send a written acknowledgment to the individual. A written report of the actions taken which resulted in the request for the hearing will be forwarded to the Division of Administrative Hearings by the Eligibility Specialist within ten days of the request for the hearing. The Division of Administrative Hearings will then send a hearing notice to the individual and the individual's representative. The hearing notice will contain the date, time and place of the hearing. The hearing will be scheduled after considering the convenience of the individual. The notice will be sent at least ten days prior to the hearing to allow for preparation of the case.

A copy of the hearing request and acknowledgment letter will be forwarded to the regional office. The Eligibility Specialist will review the circumstances prior to the hearing and will submit a report to the Hearing Officer. The person who had primary responsibility for the decision will furnish the required reports. If the review results in a satisfactory adjustment or explanation, the individual may make written withdrawal of the request for a hearing which will be forwarded immediately to the Hearing Officer.

When additional medical information is requested by the individual, it will be obtained at Department expense from a medical source satisfactory to the individual. The Hearing Officer can also consider the physician's report or can request additional evidence. The medical report will be made in writing or by personal testimony for the hearing record. When the hearing involves medical issues, a medical assessment other than that of the persons involved in making the original decision will be obtained and made a part of the record if the Hearing Officer or the individual considers it necessary.

### **Section 7.2 Continuation of Benefits**

If the individual requests a hearing at any time during the Adverse Action Notice Period, assistance will be continued until the written hearing decision is rendered. The Adverse Action Notice Period is the twelve day period (ten days for notice plus two days for mail), starting with the date of the written notice of eligibility.

If a hearing is requested after the twelve day period, assistance will not be continued or reinstated at its previous level pending a decision.

Closure of temporary coverage is a denial and continuation of benefits cannot be made.

### **Section 7.3 Conducting an Administrative Hearing**

The Eligibility Specialist and other Department representatives involved in the decision will participate in the hearing. All participants will testify under oath.

Either party may subpoena witnesses and evidence by request through the Division of Administrative Hearings Office. The party requesting the subpoena will bear any expenses of issuance and costs of reimbursement to witnesses.

All hearings will:

- I. be conducted privately and be open only to the individual, anyone present at the individual's request, and members of the Department's staff, or others selected by the Hearing Officer for their participation in the hearing;
- II. be conducted informally without technical rules of evidence. Hearings will be subject to the requirement of due process, the regulations of the Division of Administrative Hearings and the Administrative Procedure Act. All witnesses will testify under oath;
- III. be opened by the Hearing Officer who will make a statement of points in issue, give all participants an opportunity to present relevant oral or written testimony or documentary evidence, offer rebuttal, question witnesses, examine all evidence presented at the hearing, and establish competency of witnesses offering subjective or technical opinions;
- IV. be recorded to be available to members of the Department and to the individual or individual's representative. All documentary evidence submitted as exhibits at the hearing will be available;
- V. be concluded when the Hearing Officer and the individual or individual's representative are satisfied that all available relevant evidence has been introduced and properly examined; and
- VI. result in a decision based exclusively on evidence or testimony presented at the hearing.

**Section 7.3.1 The Hearing Officer's review of the Department's decision shall include consideration of:**

- I. the Agency's failure to act with reasonable promptness. This includes undue delay in reaching a decision about eligibility or refusal to consider a request for assistance and termination or reduction of assistance.
- II. an Agency decision regarding:
  - A. eligibility for assistance in both initial and subsequent determinations;
  - B. the level of coverage granted.

**Section 7.3.2 The individual or the individual's representative will have the opportunity to:**

- I. examine all documents and records pertinent to the hearing;
- II. present the case with or without the aid of others;
- III. bring witnesses;
- IV. establish all pertinent facts and circumstances;
- V. present any relevant arguments without interference;
- VI. question or refute any testimony or evidence; and
- VII. confront and cross examine adverse witnesses.

Any information shared with the Hearing Officer must also be shared with the individual or the individual's representative.

**Section 7.3.3 Following the Hearing, a written decision will be prepared by the Hearing Officer.**

The decision will contain:

- I. a statement of the issue;
- II. a list of participants;
- III. relevant facts brought out at the hearing and items introduced into evidence;
- IV. pertinent provisions in Department's policy governing the decision; and
- V. the decision and the basis for the decision.

A copy of the hearing decision will be sent to the individual, the individual's representative, the regional office and the MaineCare Program Manager.

The Department is bound by the hearing decision. The decision is applied to the case in question only.



### **Section 7.4 Implementing Results**

The hearing decision will be implemented upon receipt of the written decision.

If the individual files an appeal to Superior Court benefits will continue if directed by the Attorney General or the court.

### **Section 7.5 Judicial Review**

Within five days of the written decision by the Hearing Officer, the copy of the decision and notice of the individual's rights to judicial review under Maine Administrative Procedure Act 5 M.R.S.A., Sec. 11001 et seq. will be mailed to the individual and the individual's representative. The notice will also advise the individual that to take advantage of this right, a petition for review with the Superior Court must be filed within thirty days of the receipt of the decision.

For additional information on the preparation of a hearing, see Appendix I - Preparation for the Hearing Process.

## **SECTION 8 RECORD RETENTION**

Material is kept for auditing purposes for three years. Material over three years old may be destroyed except for the first application which should be kept even if it is over three years old.

Individual case records are not to be filed in Archives for historical preservation and future review by historians or anyone else. Such retention has no bearing on the administration of MaineCare.

The only exception to this procedure is a case which has been referred to the Fraud Investigation and Recovery Unit (FIR) or Attorney General for collection or prosecution purposes. These case records shall be clearly marked "Do Not Destroy".